

Murray Rice

SLIS: 5010:0EXW

Casting Off Essay

12/11/24

## Respect des Fonds and Provenance Lost: Viewing the Henry Darger Collection Through an Archival Lens

There aren't many exciting moments when it comes to the work of a processing archivist, but occasionally, treasures appear. Usually, it's in the form of a box photos, or a few letters but in the case of Henry Darger, the material uncovered was not only an unrepresented amount of material, but it also ended up being a literal treasure trove to those involved in its discovery. It's every archivist's dream to be able to process and archive such a diverse and inherently important material. Studying the case of Henry Darger highlights the complexities and ethical challenges inherent in the archival process, it's riddled with missteps and misuse by those handling the material and even exposes some faults in the standards archivists adhere to. By examining this case through an archival lens (which includes a set of standards used nationwide) we can gain a better understanding of the nuances of the archival process while also casting light into the liminal spaces of its set of standards and practices.

Henry Darger died intestate (with the absence of a will) April 13<sup>th</sup>, 1977. Before he passed Darger was a custodian at a catholic hospital in Chicago for fifty-four years. He was a recluse, who lived in the same apartment building in Chicago's North side. His landlord, Nathan Lerner (who was also an accomplished photographer), had a soft spot for the man, never raising his rent in the time that Darger lived at his apartment. When Darger entered hospice just before

his passing, it was Lerner who tended to his needs, helping to ease Darger's transition from lonely hermit to a forgotten soul—Darger never mentioned any living relatives. Sadly, to say, but when someone in Henry Darger's position (reclusive, and often noted to be wearing tattered, mended clothes) dies intestate its usually of no consequence to anyone but the landlord who must gather their things for donation or the dumpster. Which is what Lerner was expecting when Darger was in hospice and sent over one of his friends to start cleaning up the detritus of the long-standing hermit. What Lerner found in his tenant's apartment was an immense discovery that changed the scope of an established art movement: "Shortly after Darger moved out, Lerner asked one of his tenants, David Berglund, to help clear out Darger's belongings from the room he had occupied. After hauling away two truckloads of trash, Berglund came upon Darger's artwork and writings. He told Lerner — an artist himself who immediately recognized its importance — and as they began to examine it, their awe and amazement grew..."(Biography). In the apartment, was Henry Darger's life's work which included a fifteen-hundred-page illustrated manuscript, stacks of paintings, and various other mediums of art included collages and art made from found material in the area surrounding his apartment. Lerner immediately halted all excavation of the apartment. With the help of his wife, Kiyoko Lerner, and an associate, art historian John MacGregor the group preserved, archived, donated and sold Darger's work strategically to art museums and special collections around the world. It was an immense undertaking for a landlord and his wife, also an artist to undertake. The inherent legal issues aside, the situation also raises a few questions about how the collection was processed and archived: did the Lerner's adhere to the standards and practices established by institutions like the Society of American Archivists (SAA) to help them sift through and organize Darger's legacy, or did his work ultimately suffer by being in private hands for too long?

The SAA created a set of standards that have been adopted by almost every institution that handles archival material in the United States. This set of standards is laid out in a comprehensive guide called *Describing Archives: A Content Standard* (DACS) which was created by the already well-established SAA in 2004. This guide helps create a workflow, or order of operations that is deemed appropriate, if not necessary for effectively archiving material. The first two principles in DACS give important insight into archiving, its process and why these factors are important. Principle one is as follows: **“Records in archives possess unique characteristics.** Archival materials have traditionally been understood to consist of the documents organically created, accumulated, and/or used by a person or organization in the course of the conduct of affairs and preserved because of their continuing value.” (*Describing*). This principle seems simple, but its importance shouldn’t be overlooked. Even with something as astonishing as Darger’s collection, it is necessary to state that this collection needs to be cared for properly. Principle two is especially interesting in Darger’s case. It states: Principle 2: **“The principle of respect des fonds is the basis of archival arrangement and description.** The records created, assembled, accumulated, and/or maintained and used by an organization or individual must be kept together (i.e., identified as belonging to the same aggregation) in their original order, if such order exists or has been maintained.” (*Describing*). Respect des fonds is crucial to proper archiving and essentially means that for best practice, all materials being archived should be archived in the order that they are found. This method is important because in archiving the way things are organized is also important information that can tell any research using the collection important metadata that they can use in the analysis of the material. This is interesting to think about with Darger. Let’s say a researcher wanted to know the last line that Darger wrote in his story, the last words he put to paper, if the collection were properly archived

the researcher would be able to easily intuit this from the way the collection was organized. But if that page were haphazardly mixed in with another random assortment of papers, this information would be lost. This type of hypothetical situation is a great exercise as well because it simply shows the importance of a concept like respect des fonds. But now back to reality: was Darger's collection handled in this way?

Though Nathan and Kiyoko Lerner took control of Darger's work, the initial processing was done with the help their friend and colleague John MacGregor, who would continue to be involved with Darger's work culminating into the first book ever published on Darger, and to this day the most comprehensive called *Henry Darger: Realms of the Unreal*. MacGregor's book focuses mostly on Darger's work through a psychiatric lens (he was considered one of the last old school Freudians and studied alongside Anne Freud). MacGregor was meticulous in his work processing the Darger collection. This can be seen from MacGregor's *Appendix A: Catalogue Raisonné of the Writings of Henry Darger* from *Realms*. The appendix contains the contents of Darger's collection and how it was organized before its eventual donation to the American Folk Art Museum in New York city. From the appendix's intro, it's clear that, though not a librarian by trade, MacGregor with the help of the museum receiving the donation adequately: "Each Darger's huge manuscripts are preserved now in the somewhat confusing form in which he left them" (Darger-Appendix). With respect des fonds in proper standing, there's another facet of the second principle that needs attention when it comes viewing Darger's collection with an archival lens: provenance.

According to the SAA's dictionary of archival terms provenance pertains to "information regarding the origins, custody, and ownership of an item or collection" (SAA). In the case of Darger's material, the latter is the prevailing issue that is, at the time of writing, still being sussed

out in courts. Provenance has become increasingly important in archival practice, especially as items of questionable acquisition are re-processed and given back to their rightful owners.

concern is about how the Lerner's ended up caring for Darger's material which includes them owning the copyright to everything that was found in their apartment. In 2019 there was an in-depth look into the Lerner's claim to Darger's material published by *Northwestern Journal of Technology and Intellectual Property*. The articles explore two ways in which the Lerner's copyright claim could be justified, a transfer by gift, or a transfer by probate.

The first, a transfer by gift falls under the assumption that Darger, on his deathbed, told the Lerner's they could have anything that was in his apartment, which upfront is a heavily disputed claim according to the *Northwestern Journal* article : "When Lerner first asked Darger what should be done with his personal things, Darger reportedly replied, "I don't want anything, they're of no use to me anymore. You can throw them away." (Westby). This is in direct conflict with Darger's later comments to Nathan Lerner to Lerner, saying "it's all yours, please keep it" (Westby). With this discrepancy alone, it's a wonder that any institution would accept the works under such shaky provenance. The second option that the *Northwestern Journal* explores, transfer by probate, is even less convincing, but would explain why the American Folk Museum would accept the material: "Based on the laws governing intestate property succession in the Probate Code, Darger's property would have been ordinarily transferred to his closest living heir. Although the records of Darger's family are incomplete and difficult to establish, there is evidence that Darger had living cousins at the time of his death who were not contacted". It's clear that the Lerner's and MacGregor failed to put any effort into finding out if Darger had any living relatives, a mistake that could cost them dearly.

It's difficult to surmise what the exact ramifications of this legal entanglement are once everything comes unraveled, and it is revealed that Darger indeed has living relatives that are entitled to his work and any profits gained, but Darger case has surprising parallels to another case, the case of Vivian Maier. Maier was a Chicago nanny from the mid to late 20<sup>th</sup> century who was a film photography hobbyist, often taking photos in the streets of Chicago for fun, photos that included portraits and other forms of street photography, a genre of photography not fully realized during her time as a photographer. After her passing, a storage locker of her film rolls, which totaled in the 900's, was found. Maier was also estranged from her family, and her work was unrecognized until John Maloof and Jeffery Goldstein "developed her reputation as a "genius" photographer and thereafter claimed copyright to the images". Eventually found relatives of Maier sued Maloof for copyright infringement, which eventually led to a settlement: "In 2019, the case reached a settlement. As part of the confidential agreement, Goldstein was required to make a payment to Maier's estate. The specifics of the settlement amount and the terms were not disclosed to the public, but the resolution mandated Goldstein to comply with the agreed payment, thereby concluding the lawsuit." (Exploring).

Other than monetary loss, the care and preservation of Darger's work could also be at stake, possibly having to be deaccessioned. Deaccessioning is defined by the SAA as "the process by which an archives, museum, or library permanently removes accessioned materials from its holdings". The process is relatively arduous and strives for a systematic, transparent process that involves ethical and legal considerations. Items are deaccessioned for various reasons, but recently more ethical concerns have caused museums and archives to reconsider the items in their collections. If the Darger works were found to be donated under false assumptions

of ownership, the backlash and potential lawsuits could see more than a monetary solution, as in the case of Maier, but also a resolution that involves deaccessioning Darger's materials.

The Lerner's failure to properly search for any living relatives of Darger may seem pernicious, especially considering that one of Darger's paintings recently sold for \$700,000 at Christies Auction House, but this seems to be more of a misstep by the couple than anything malicious. Nathan Lerner was kind to his tenant, even helping him pay his rent, eventually giving him a discounted rate: "I can't pay the rent or food. Mr. Leonard, you must give me some money." Darger said. Nathan understood him and gave him the amount he asked for. He said, I will pay you the whole amount on such and such a date. He did pay us the entire amount on the day he promised." Darger lived a tough life. He never had any visitors to his apartment, certainly no family members. Even while in hospice, Darger made no mention of family to be called to see or care for him. The Lerner's had every right to believe that they were the only ones who could responsibly handle the legacy that Darger left behind. And thanks to them the world now knows the work of Henry Darger.

Still, good faith only goes so far, and though the world now knows Darger's work, again it is at risk of deaccessioning. So, what can be done to curb further issues such as this? Part of a solution can lie in the hands of archivists, the institutions accepting this work. Stronger accessioning standards could be the answer. In the case of Darger, it's easy to see that the institutions accepted the material with a "no questions asked" attitude. Which in a way is understandable. Institutions like special collections and museums thrive on engagement through their holdings, and nothing boosts engagement more than valuable material. But this can become problematic in cases such as Darger's. Had these institutions known that their material could potentially be deaccessioned because of faulty provenance, it is likely they wouldn't have

accepted the donations or bought any pieces. The case of Darger is interesting because, well in short, the Lerner's failed to do the work that the institutions assumed they did. Albeit the institutions are not at fault, yet they will suffer the consequences. This is an area that can be explored in the archival process: should archivists be double checking provenance? Yes, this will require some extra sleuthing, and probably require the help of some lawyers, but as we can see in the case of Darger, it may be for the best in the long run to adapt more rigorous accessioning requirements to the standards all archivists adhere to. Thanks to the efforts of bills like the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) deaccessioning has become the transparent and meticulous process we see reflecting in the current iteration of standards guidelines like DACS, but as seen with the case of Darger, the same application of reformation and reconsideration hasn't quite reached an equal set of standards and if there's one takeaway any archivist can have after looking at the Darger case, it is this.

In examining the Henry Darger collection through an archival lens, we uncover more than just an extraordinary body of work—it also highlights the complexities and ethical challenges inherent in the archival process. The principles of *respect des fonds* and provenance underscore the delicate balance between preserving the integrity of a collection and navigating the legal and moral uncertainties surrounding its ownership. The Lerner's role in preserving and distributing Darger's work, while invaluable in bringing attention to an otherwise unknown artist, raises questions about the rights of individuals to manage and profit from collections that may not be entirely their own. The case of Darger's work, much like that of Vivian Maier, brings into sharp relief the need for rigorous archival practice and transparency, and even some changes in the early stages of archiving that can be made. Ultimately, the unresolved legal questions surrounding Darger's legacy may lead to important precedents in the world of archives,



intellectual property, and the cultural ownership of art. As the situation continues to unfold, it serves as a stark reminder of the responsibility's archivists bear—not only in safeguarding material but also in ensuring that the rightful origins and ownership of such materials are respected. Whether Darger's work will be returned to his potential heirs or continue to be held by those who found it remains uncertain, but the case will undoubtedly influence how future archival collections are handled, both ethically and legally.

## Works Cited

*Biography* / Henry Darger. <https://www.officialhenrydarger.com/about/>. Accessed 4 Dec. 2024.

*Exploring Legal Controversies Surrounding Vivian Maier's Estate - Center for Art Law*. 25 July 2024, <https://itsartlaw.org/2024/07/25/exploring-legal-controversies-surrounding-vivian-maiers-estate/>.

*Describing Archives: A Content Standard*. 2nd edition, Society of American Archivists, 2013.

*Exploring Legal Controversies Surrounding Vivian Maier's Estate - Center for Art Law*. 25 July 2024, <https://itsartlaw.org/2024/07/25/exploring-legal-controversies-surrounding-vivian-maiers-estate/>.

*HENRY DARGER (1892-1973) , Sans Titre | Christie's*. <https://www.christies.com/en/lot/lot-5858828>. Accessed 3 Dec. 2024.

*Henry Darger (1892-1973), 148 At Jennie Richee During Fury of Storm Are Unsuccessfully Attached [Sic] by Glandelinians / 149 At Jennie Richee Narrowly Escape Capture but Blengins Come to Rescue, Double Sided | Christie's*. <https://www.christies.com/en/lot/lot-6187836>. Accessed 5 Dec. 2024.

*SAA Dictionary: Describing Archives: A Content Standard*.

<https://dictionary.archivists.org/entry/describing-archives-a-content-standard.html>.

Accessed 3 Dec. 2024.

Westby, Elyssa. *HENRY DARGER'S "REALMS OF THE UNREAL"—BUT WHO IN THE REALM IS KIYOKO LERNER?*

## Bibliography

*Biography* / Henry Darger. <https://www.officialhenrydarger.com/about/>. Accessed 4 Dec. 2024.

*Exploring Legal Controversies Surrounding Vivian Maier's Estate - Center for Art Law*. 25 July 2024, <https://itsartlaw.org/2024/07/25/exploring-legal-controversies-surrounding-vivian-maiers-estate/>.

*Describing Archives: A Content Standard*. 2nd edition, Society of American Archivists, 2013.

*Exploring Legal Controversies Surrounding Vivian Maier's Estate - Center for Art Law*. 25 July 2024, <https://itsartlaw.org/2024/07/25/exploring-legal-controversies-surrounding-vivian-maiers-estate/>.

*HENRY DARGER (1892-1973) , Sans Titre* | Christie's. <https://www.christies.com/en/lot/lot-5858828>. Accessed 3 Dec. 2024.

*Henry Darger (1892-1973), 148 At Jennie Richee During Fury of Storm Are Unsuccessfully Attached [Sic] by Glandelinians / 149 At Jennie Richee Narrowly Escape Capture but Blengins Come to Rescue, Double Sided* | Christie's. <https://www.christies.com/en/lot/lot-6187836>. Accessed 5 Dec. 2024.

*SAA Dictionary: Describing Archives: A Content Standard*.

<https://dictionary.archivists.org/entry/describing-archives-a-content-standard.html>.

Accessed 3 Dec. 2024.

Westby, Elyssa. *HENRY DARGER'S "REALMS OF THE UNREAL"—BUT WHO IN THE REALM IS KIYOKO LERNER?*

Pogrebin, Robin. "A Henry Darger Dispute: Who Inherits the Rights to a Loner's Genius?" *The New York Times*, 7 Feb. 2022. *NYTimes.com*,  
<https://www.nytimes.com/2022/02/07/arts/design/henry-darger-estate.html>.

"John MacGregor on Henry Darger." *To The Best Of Our Knowledge*, 14 Apr. 2020,  
<https://www.ttbook.org/interview/john-macgregor-henry-darger>.

*Collection: Henry Darger Papers / Welcome to the American Folk Art Museum Archives.*  
[https://folkartmuseum.libraryhost.com/resources/henry\\_darger\\_papers](https://folkartmuseum.libraryhost.com/resources/henry_darger_papers). Accessed 4 Dec.  
2024.